

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

Claimant began working for respondent in May 2004. According to claimant, on or around June 7, 2004, he experienced back and leg symptoms after moving furniture at his home. Claimant told respondent about his symptoms and respondent's nurse informed claimant that he needed to obtain releases from both his personal physician and the company doctor before returning to work. Claimant went to both doctors' offices and received a release from each office to return to work.

Claimant returned to work on June 13, 2004. Claimant alleges he injured or aggravated his back at work that day. According to claimant, on June 13, 2004, he felt a sharp pop and tingling in his back after turning to put battery grids on a pallet behind him. After reporting this incident to his supervisor, claimant was given ibuprofen and an ice pack and was told to lie down, which he did. Claimant testified that after resting he attempted to perform lighter work when he felt another sharp pop in his back and the left side of his body became numb.

On August 30, 2004, claimant saw Dr. Philip R. Mills for an evaluation ordered by Judge Moore. After reviewing medical records provided to him and examining claimant, Dr. Mills diagnosed bulging discopathy with low back sprain. The doctor concluded that claimant's work activity on June 13, 2004, permanently aggravated or accelerated a preexisting underlying problem.

A worker is entitled to receive benefits under the Workers Compensation Act even when an accident at work only serves to aggravate a preexisting condition.<sup>1</sup> The test is not whether the accident caused the condition but, instead, whether the accident aggravated or accelerated a preexisting condition.<sup>2</sup>

Claimant and two witnesses for respondent testified at the August 2004 preliminary hearing before Judge Moore. The Judge awarded claimant workers compensation benefits, in part after assessing claimant's demeanor and credibility. In addition, Dr. Mills concluded claimant's June 13, 2004 work activity aggravated or accelerated a preexisting condition. After giving some deference to the Judge's assessment of claimant's credibility, the Board agrees the record taken as a whole supports claimant's position.

The Board concludes that claimant, at the very least, sustained a work-related aggravation to his back on June 13, 2004. After the June 7, 2004 incident at home, claimant obtained releases to return to work from both the offices of his personal physician and the company doctor. The Board finds claimant's testimony credible that he sustained

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<sup>1</sup> *Odell v. Unified School District*, 206 Kan. 752, 481 P.2d 974 (1971).

<sup>2</sup> *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

a work-related accidental injury or aggravation on June 13, 2004. The Board agrees with Judge Moore's implied finding that claimant sustained an injury or aggravation in an accident that arose out of and in the course of his employment with respondent. Accordingly, the September 20, 2004 preliminary hearing Order should be affirmed.

**WHEREFORE**, the Board affirms the September 20, 2004 preliminary hearing Order entered by Judge Moore.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 2004.

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BOARD MEMBER

c: Scott M. Price, Attorney for Claimant  
James P. Wolf, Attorney for Respondent and its Insurance Carrier  
Bruce E. Moore, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director